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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ANIMAL WELLNESS ACTION, a non-profit
corporation, CANA FOUNDATION, a non-
profit corporation, THE CENTER FOR A
HUMANE ECONOMY, a non-profit
corporation, LAURA LEIGH, individually,
and WILD HORSE EDUCATION, a non-
profit corporation,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
INTERIOR, BUREAU OF LAND
MANAGEMENT, and JON RABY, Nevada
State Director of the Bureau of Land
Management, and the

Defendants.

Case No. 3:22-cv-00034

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR JUDICIAL NOTICE
AND MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Complaint Filed: January 21, 2021

PLEASE TAKE NOTICE that upon the accompanying Memorandum of Law, Declaration of Jessica L. Blome, and exhibits attached thereto, together with all prior pleadings and proceedings had herein, Plaintiffs hereby move this Court and request that this Court take judicial notice of the Fifteenmile Herd Management Area Plan (August 2019); Notes for 43 CFR Subtit. B, Ch. II, Subch. D, Group 4700; 51 Fed. Reg. 7410, Mar. 3. 1986; 56 Fed. Reg. 786, January 9, 1991; 43 C.F.R. §4700 *et seq.* (1985); and 49 Fed. Reg. 49252, Dec. 18, 1984 under Federal Rule of Evidence 201(b). This Request for Judicial Notice is being filed concurrently with and in support of Plaintiffs' Motion for Summary Judgment.

DATED: August 10, 2023

Respectfully Submitted,

/s/ Danielle M. Holt

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MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiffs move this Court to take judicial notice of the Fifteenmile Herd Management Area Plan (August 2019); Notes for 43 CFR Subtit. B, Ch. II, Subch. D, Group 4700; 51 Fed. Reg. 7410, Mar. 3. 1986; 56 Fed. Reg. 786, January 9, 1991; 43 C.F.R. §4700 *et seq.* (1985); and 49 Fed. Reg. 49252, Dec. 18, 1984 under Federal Rule of Evidence 201(b). The Court may take judicial notice of these because they are relevant in establishing Defendants’ mandatory duty to create Herd Management Area Plans (HMAPs) prior to adopting any gather plans.

This Court may take judicial notice of “a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)(1)-(2). FRE 201 further provides that the Court “may take judicial notice on its own” and “must take judicial notice if a party requests it and the court is supplied with the necessary information.” *Id.* at 201(c)(1)-(2).

Documents which may be considered for judicial notice pursuant to Rule 201 include legislative history documents, federal register documents, and other government documents, including reports of government bodies and records found on government websites. See *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1001 (9th Cir. 2018); *Democratic Nat’l Comm. V. Reagan*, 329 F. Supp. 3d 824, 855 n.12 (D. Ariz. 2018); *Longo v. Seminole Indian Casino-Immokalee*, 813 F.3d 1348, 1349 n.2 (11th Cir. 2016); *Beaver v. Tarsadia Hotels*, 29 F. Supp. 3d 1294, 1320 (S.D. Cal. 2014); *FAS Capital, LLC v. Carr*, 7 F. Supp. 3d 1259, 1266 (N.D. Ga. 2014); *Experian Info. Sols., Inc.*, 633 F. Supp. 2d 1104, 1107 (C.D. Cal. 2009).

A. Fifteenmile Herd Management Area Plan (August 2019)

This document is a public document promulgated by the Bureau of Land Management (BLM) and downloaded from their website. As such, it is the type of document for which judicial notice is appropriate. The document provides an example of the type of content contained in HMAPs. It is being submitted to assist the Court in distinguishing between HMAPs and Gather-EAs. The difference between the two is relevant to Plaintiffs’ contention that HMAPs must be

1 created prior to any Gather-EA being adopted.

2 **B. Notes for 43 CFR Subtit. B, Ch. II, Subch. D, Group 4700**

3 This document, downloaded from Lexis, contains notes applicable to 43 C.F.R. §4700 *et*
4 *seq.*, which regulations were created by BLM to implement the Wild and Free-Roaming Horses
5 and Burros Act (WHA). Judicial notice is being requested as evidence that the current BLM
6 regulations were adopted in 1986, as amended in 1991. The document and these facts can be
7 accurately and readily determined from sources whose accuracy cannot reasonably be
8 questioned. As such, it is the type of document for which judicial notice is appropriate.

9 **C. 51 Fed. Reg. 7410, Mar. 3, 1986**

10 This document, published in the Federal Register, addresses BLM's final rulemaking for
11 revisions to 43 C.F.R. §4700 *et seq.* As a Federal Register document, judicial notice is
12 appropriate. It is relevant in establishing that the current BLM regulations were adopted in 1986.

13 **D. 56 Fed. Reg. 786, January 9, 1991**

14 This document, published in the Federal Register, addresses the 1991 amendments to
15 BLM's regulations. As a Federal Register document, judicial notice is appropriate. It is being
16 submitted to clarify that the 1991 amendments did not alter BLM's mandatory duty to create
17 HMAPs.

18 **E. 43 C.F.R. §4700 *et seq.* (1985)**

19 This document contains the BLM regulations as of 1985—prior to adoption of the current
20 regulations. It is a public document for which judicial notice is appropriate. It can be accurately
21 and readily determined from sources whose accuracy cannot reasonably be questioned.
22 It is relevant for purposes of interpreting the current regulations, demonstrating that prior to
23 1986, the regulations did not provide that HMAs shall be established for the maintenance of wild
24 horse and burro herds, did not contain any language regarding HMAPs, and did not connect any
25 land use or management plans with HMAs.

26 //
27

F. 49 Fed. Reg. 49252, Dec. 18, 1984

This document, published in the Federal Register, is relevant for purposes of interpreting the current BLM regulations. It establishes that in 1984, BLM proposed changes to its regulations, introducing mandatory requirements for HMAs and HMAPs. It is relevant for addressing statutory construction of BLM's regulations.

For these reasons, Plaintiffs respectfully request this Court to take judicial notice of the documents.

DATED: August 10, 2023

Respectfully Submitted,

/s/ Danielle M. Holt

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CERTIFICATE OF SERVICE

I hereby certify that on August 10, 2023, I electronically filed the foregoing Notice of Motion and Motion for Judicial Notice and Memorandum of Points and Authorities in Support Thereof with the Clerk of the U.S. District Court in the District Court of Nevada using the CM/ECF system, which will send notification of this filing to the attorneys of record and all registered participants.

/s/ Jessica L. Blome
Attorney for Plaintiffs